

STATE OF TENNESSEE

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August 3, 2000

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Subject: TRA Docket #00-00562 - United Cities Gas (UCG) Petition for approval of new or revised franchise agreements with Kingsport, Bristol, Morristown, and Maury County.

On June 30, 2000, UCG, a division of Atmos Energy Corporation (Atmos), petitioned the TRA for approval of several franchise agreements. The agreement with Bristol, TN requires UCG to pay Bristol a franchise fee based on 6% of revenues and may be increased to as much as 8% of revenues. The agreement with the city of Kingsport may also require a franchise fee based on a percentage of revenues not to exceed any other fee paid by UCG in Tennessee. The agreement with Morristown requires a franchise fee payment of 5% of revenues.

Franchise fees are not new in the utility industry, but there is a recent court decision that deals with the legality of franchise fees that are not related to costs. In an appeal of a Chattanooga, Tennessee ordinance that was enacted on February 6, 1996 in **CITY OF CHATTANOOGA, TENNESSEE, Plaintiff-Appellant, vs. BELLSOUTH TELECOMMUNICATIONS, INC., MCI METRO ACCESS TRANSMISSION SERVICES, INC., AMERICAN COMMUNICATIONS SERVICES, INC., Defendant-Appellee**, (City of Chattanooga vs. Bellsouth) the Court of Appeals of Tennessee, Eastern Section, affirmed a decision finding the Chattanooga franchise fee to be invalid under current law. The decision dated January 26, 2000 stated:

The proper measure for a franchise fee under our cases is not the "franchise's value as a business asset", but rather the **cost to the City** of allowing the franchise to use its public rights-of-way. [emphasis added]

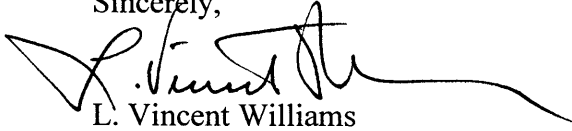
The court rejected franchise fees based upon revenues.

To assist us in determining whether the proposed franchises are necessary and proper for the

public convenience and conserves the public interest, please provide all information that the TRA has that shows the costs city or county governments incur because of the operations of a natural gas or water utility. Please provide any data the TRA possesses that may demonstrate that UCG's proposed franchise fees reasonably approximate the added costs to the government entities collecting those franchise fees.

If you or your staff have any questions, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Vincent Williams", with a long horizontal flourish extending to the right.

L. Vincent Williams

cc: Mark Thessin, United Cities Gas Co.

1. Please provide all information in UCG's or Atmos' possession, or of which UCG or Atmos has knowledge that shows the cost the city governments incur because of UCG's franchised operations.
2. Please provide any study made by, or on behalf of, UCG or Atmos to estimate the cost UCG or Atmos causes any city government to incur in any state.
3. Please provide all information that may show any relationship between a city's costs and any present or proposed franchise fees or UCG revenues. Please include in this information the maximum annual franchise fees that would be paid under each of the proposed agreements based on 1) 1999 calendar year sales and 2) 1999 calendar year sales adjusted to show the effects on the fees if natural gas prices were two times as much as they were in 1999.
4. Please provide the statutory authority for a city to charge UCG a franchise fee based on a percentage of revenues.
5. If UCG supports the proposed franchise fees as being legal, please provide the rationale that differentiates UCG's situation from the appellants in *City of Chattanooga vs. Bellsouth*.
6. Please provide the entire franchise agreement with the City of Bristol Tennessee (Ordinance 95-60) as amended by Ordinance 99-13.
7. Please provide the names of all negotiators involved in each of the proposed franchise agreements.
8. Please provide the amounts (if any) of franchise fees that have been collected under each of the proposed agreements.